

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Kim E. Tolbert,

Case No. 2:23-cv-01026-JAD-EJY

Plaintiff

V.

Clark County Detention Center, et. al.,

Order Dismissing and Closing Case

Defendants

Plaintiff Kim E. Tolbert brings this civil-rights lawsuit to redress constitutional violations she claims she suffered while detained at the Clark County Detention Center. On July 24, this court dismissed Tolbert's claims with leave to amend by October 22, 2024.¹ The court warned her that this case would be dismissed and closed if she failed to file an amended complaint by that deadline.² Tolbert filed two motions for an extension, which this court granted, ultimately extending her amended-complaint deadline to December 16, 2024.³ Tolbert did not file an amended complaint by that extended deadline nor moved for a second extension or to do so.

The law permits a district court to dismiss an action based on a party's failure to comply with a court order.⁴ In determining whether to dismiss an action on this ground, the court must consider: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to

¹ ECF No. ECF No. 6.

² *Id.* at 10.

³ ECF Nos. 8, 9, 10.

⁴ See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint).

1 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 2 disposition of cases on their merits; and (5) the availability of less drastic alternatives.⁵

3 The first two factors, the public's interest in expeditiously resolving this litigation and the
 4 court's interest in managing its docket, weigh in favor of dismissal of the plaintiff's claims. The
 5 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 6 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
 7 ordered by the court or prosecuting an action.⁶ The fourth factor—the public policy favoring
 8 disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

9 The fifth factor requires the court to consider whether less drastic alternatives can be used
 10 to correct the party's failure that brought about the court's need to consider dismissal.⁷ Courts
 11 "need not exhaust every sanction short of dismissal before finally dismissing a case, but must
 12 explore possible and meaningful alternatives."⁸ Because this action cannot proceed until and
 13 unless plaintiff files an amended complaint, the only alternative is to enter a second order setting
 14 another deadline. But the reality of repeating an ignored order is that it often only delays the
 15 inevitable and squanders finite resources along the way. The circumstances here do not indicate
 16 that this case will be an exception: there is no hint that Tolbert needs additional time nor

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 18⁵ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
 19 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

20⁶ *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

21⁷ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
 22 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
 23 *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that "the
 persuasive force of" earlier Ninth Circuit cases that "implicitly accepted pursuit of less drastic
 alternatives prior to disobedience of the court's order as satisfying this element[,] i.e., like the
 "initial granting of leave to amend coupled with the warning of dismissal for failure to
 comply[,]" have been "eroded" by *Yourish*).

⁸ *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).

1 evidence that she did not receive the court's order. Setting another deadline is not a meaningful
2 alternative given these circumstances. So the fifth factor favors dismissal.

3 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of
4 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** for failure to
5 file an amended complaint by the court-ordered deadline, leaving no claims pending. The Clerk
6 of Court is directed to **ENTER JUDGMENT** accordingly and **CLOSE THIS CASE**. **No other**
7 **documents may be filed in this now-closed case.**

8 Dated: January 23, 2025

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10 U.S. District Judge Jennifer A. Dorsey

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